

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Second Amended
Accusation Against:**

Robert Adams Graham, M.D.

**Physician's and Surgeon's
Certificate No. A 32806**

Respondent

Case No. 800-2016-025845

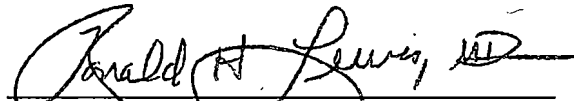
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 14, 2019.

IT IS SO ORDERED: May 17, 2019.

MEDICAL BOARD OF CALIFORNIA



**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 GLORIA CASTRO
Senior Assistant Attorney General
3 STEVE DIEHL
Supervising Deputy Attorney General
4 State Bar No. 235250
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Second Amended
Accusation Against:

14 **ROBERT ADAMS GRAHAM, M.D.**
15 **728 E. Bullard Avenue, Suite 101**
Fresno, CA 93710

16 **Physician's and Surgeon's Certificate No. A**
17 **32806**

18 Respondent.

Case No. 800-2016-025845

OAH No. 2018020003

19
20 **STIPULATED SETTLEMENT AND**
21 **DISCIPLINARY ORDER**

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
26 of California (Board). She brought this action solely in her official capacity and is represented in
27 this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,
28 Supervising Deputy Attorney General.

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2. Respondent Robert Adams Graham, M.D. (Respondent) is represented in this proceeding by attorney Lawrence E. Wayte, Esq., whose address is: 7647 North Fresno Street Fresno, CA 93720.

3. On or about August 21, 1978, the Board issued Physician's and Surgeon's Certificate No. A 32806 to Robert Adams Graham, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2016-025845, and will expire on June 30, 2020, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 800-2016-025845 was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. A copy of Second Amended Accusation No. 800-2016-025845 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 800-2016-025845. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Second
3 Amended Accusation No. 800-2016-025845, if proven at a hearing, constitute cause for imposing
4 discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Second Amended Accusation without the expense
6 and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Second Amended Accusation, and that Respondent
8 hereby gives up his right to contest those charges. Respondent agrees that if he ever petitions for
9 early termination or modification of probation, or if the Board ever petitions for revocation of
10 probation, all of the charges and allegations contained in Second Amended Accusation No. 800-
11 2016-025845 shall be deemed true, correct and fully admitted by respondent for purposes of that
12 proceeding or any other licensing proceeding involving respondent in the State of California.

13 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
14 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
15 Disciplinary Order below.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Medical Board of California.
18 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
19 Board of California may communicate directly with the Board regarding this stipulation and
20 settlement, without notice to or participation by Respondent or his counsel. By signing the
21 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
22 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
23 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
24 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
25 action between the parties, and the Board shall not be disqualified from further action by having
26 considered this matter.

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13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 32806 issued to Respondent Robert Adams Graham, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 20 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 45 hours of CME of which 20 hours were in satisfaction of this condition.

2. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing

1 Medical Education (CME) requirements for renewal of licensure.

2 A prescribing practices course taken after the acts that gave rise to the charges in the
3 Second Amended Accusation, but prior to the effective date of the Decision may, in the sole
4 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
5 course would have been approved by the Board or its designee had the course been taken after the
6 effective date of this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than 15 calendar days after successfully completing the course, or not later than
9 15 calendar days after the effective date of the Decision, whichever is later.

10 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
11 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
12 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
13 Respondent shall participate in and successfully complete that program. Respondent shall
14 provide any information and documents that the program may deem pertinent. Respondent shall
15 successfully complete the classroom component of the program not later than six (6) months after
16 Respondent's initial enrollment, and the longitudinal component of the program not later than the
17 time specified by the program, but no later than one (1) year after attending the classroom
18 component. The professionalism program shall be at Respondent's expense and shall be in
19 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

20 A professionalism program taken after the acts that gave rise to the charges in the Second
21 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
22 the Board or its designee, be accepted towards the fulfillment of this condition if the program
23 would have been approved by the Board or its designee had the program been taken after the
24 effective date of this Decision.

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the program or not later
27 than 15 calendar days after the effective date of the Decision, whichever is later.

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1 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
2 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
3 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
4 licenses are valid and in good standing, and who are preferably American Board of Medical
5 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
6 relationship with Respondent, or other relationship that could reasonably be expected to
7 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
8 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
9 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

10 The Board or its designee shall provide the approved monitor with copies of the Decision
11 and Second Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of
12 receipt of the Decision, Second Amended Accusation, and proposed monitoring plan, the monitor
13 shall submit a signed statement that the monitor has read the Decision and Second Amended
14 Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed
15 monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall
16 submit a revised monitoring plan with the signed statement for approval by the Board or its
17 designee.

18 Within 60 calendar days of the effective date of this Decision, and continuing throughout
19 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
20 make all records available for immediate inspection and copying on the premises by the monitor
21 at all times during business hours and shall retain the records for the entire term of probation.

22 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
23 date of this Decision, Respondent shall receive a notification from the Board or its designee to
24 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
25 shall cease the practice of medicine until a monitor is approved to provide monitoring
26 responsibility.

27 The monitor(s) shall submit a quarterly written report to the Board or its designee which
28 includes an evaluation of Respondent's performance, indicating whether Respondent's practices

1 are within the standards of practice of medicine, and whether Respondent is practicing medicine
2 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
3 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
4 preceding quarter.

5 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
6 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
7 name and qualifications of a replacement monitor who will be assuming that responsibility within
8 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
9 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
10 notification from the Board or its designee to cease the practice of medicine within three (3)
11 calendar days after being so notified. Respondent shall cease the practice of medicine until a
12 replacement monitor is approved and assumes monitoring responsibility.

13 In lieu of a monitor, Respondent may participate in a professional enhancement program
14 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
15 review, semi-annual practice assessment, and semi-annual review of professional growth and
16 education. Respondent shall participate in the professional enhancement program at Respondent's
17 expense during the term of probation.

18 This condition shall be in effect for the first three (3) years of probation, and will expire
19 thereafter, unless the practice monitor recommends continued monitoring.

20 5. PROHIBITED PRACTICE. During probation, Respondent is prohibited from acting
21 as Medical Director of any medical spa or facility where cosmetic treatments are performed.
22 After the effective date of this Decision, all patients being treated by the Respondent shall be
23 notified that the Respondent is prohibited from acting as Medical Director of any medical spa or
24 facility where cosmetic treatments are performed. Any new patients must be provided this
25 notification at the time of their initial appointment.

26 Respondent shall maintain a log of all patients to whom the required oral notification was
27 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
28 medical record number, if available; 3) the full name of the person making the notification; 4) the

1 date the notification was made; and 5) a description of the notification given. Respondent shall
2 keep this log in a separate file or ledger, in chronological order, shall make the log available for
3 immediate inspection and copying on the premises at all times during business hours by the Board
4 or its designee, and shall retain the log for the entire term of probation.

5 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
6 Respondent shall provide a true copy of this Decision and Second Amended Accusation to the
7 Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership
8 are extended to Respondent, at any other facility where Respondent engages in the practice of
9 medicine, including all physician and locum tenens registries or other similar agencies, and to the
10 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
11 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
12 15 calendar days.

13 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

14 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
15 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
16 advanced practice nurses.

17 8. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
18 governing the practice of medicine in California and remain in full compliance with any court
19 ordered criminal probation, payments, and other orders.

20 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
21 under penalty of perjury on forms provided by the Board, stating whether there has been
22 compliance with all the conditions of probation.

23 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
24 of the preceding quarter.

25 10. GENERAL PROBATION REQUIREMENTS.

26 Compliance with Probation Unit

27 Respondent shall comply with the Board's probation unit.

28 Address Changes

1 Respondent shall, at all times, keep the Board informed of Respondent's business and
2 residence addresses, email address (if available), and telephone number. Changes of such
3 addresses shall be immediately communicated in writing to the Board or its designee. Under no
4 circumstances shall a post office box serve as an address of record, except as allowed by Business
5 and Professions Code section 2021(b).

6 Place of Practice

7 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
8 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
9 facility.

10 License Renewal

11 Respondent shall maintain a current and renewed California physician's and surgeon's
12 license.

13 Travel or Residence Outside California

14 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
15 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
16 (30) calendar days.

17 In the event Respondent should leave the State of California to reside or to practice,
18 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
19 departure and return.

20 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
21 available in person upon request for interviews either at Respondent's place of business or at the
22 probation unit office, with or without prior notice throughout the term of probation.

23 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
24 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
25 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
26 defined as any period of time Respondent is not practicing medicine as defined in Business and
27 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
28 patient care, clinical activity or teaching, or other activity as approved by the Board. If

1 Respondent resides in California and is considered to be in non-practice, Respondent shall
2 comply with all terms and conditions of probation. All time spent in an intensive training
3 program which has been approved by the Board or its designee shall not be considered non-
4 practice and does not relieve Respondent from complying with all the terms and conditions of
5 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
6 on probation with the medical licensing authority of that state or jurisdiction shall not be
7 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
8 period of non-practice.

9 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
10 months, Respondent shall successfully complete the Federation of State Medical Boards' Special
11 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
12 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
13 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

14 Respondent's period of non-practice while on probation shall not exceed two (2) years.

15 Periods of non-practice will not apply to the reduction of the probationary term.

16 Periods of non-practice for a Respondent residing outside of California will relieve
17 Respondent of the responsibility to comply with the probationary terms and conditions with the
18 exception of this condition and the following terms and conditions of probation: Obey All Laws;
19 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
20 Controlled Substances; and Biological Fluid Testing.

21 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
22 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
23 completion of probation. Upon successful completion of probation, Respondent's certificate shall
24 be fully restored.

25 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
26 of probation is a violation of probation. If Respondent violates probation in any respect, the
27 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
28 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,

1 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
2 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
3 the matter is final.


4 15. LICENSE SURRENDER. Following the effective date of this Decision, if
5 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
6 the terms and conditions of probation, Respondent may request to surrender his or her license.
7 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
8 determining whether or not to grant the request, or to take any other action deemed appropriate
9 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
10 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
11 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
12 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
13 application shall be treated as a petition for reinstatement of a revoked certificate.

14 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
15 with probation monitoring each and every year of probation, as designated by the Board, which
16 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
17 California and delivered to the Board or its designee no later than January 31 of each calendar
18 year.

19 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Lawrence E. Wayte, Esq. I understand the stipulation and the
22 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
23 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
24 bound by the Decision and Order of the Medical Board of California.

25
26 DATED: 1/31/2019


27 ROBERT ADAMS GRAHAM, M.D.
28 Respondent

1 I have read and fully discussed with Respondent Robert Adams Graham, M.D. the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED:

Jan 31, 2019


LAWRENCE E. WAYTE, ESQ.
Attorney for Respondent

14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Medical Board of California.

17 Dated:

2/6/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GLORIA CASTRO
Senior Assistant Attorney General


STEVE DIEHL
Supervising Deputy Attorney General
Attorneys for Complainant

27 FR2017305683
28 13421293.docx

Exhibit A

Second Amended Accusation No. 800-2016-025845

1 XAVIER BECERRA
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2 GLORIA L. CASTRO
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3 STEVE DIEHL
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO FEB. 20 20 19
BY 8012103101 ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Second Amended
Accusation Against:

Case No. 800-2016-025845

13 **ROBERT ADAMS GRAHAM, M.D.**
728 E. Bullard Avenue, Suite 101
14 Fresno, CA 93710

SECOND AMENDED ACCUSATION

15 Physician's and Surgeon's Certificate
No. A 32806,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely
21 in her official capacity as the Executive Director of the Medical Board of California, Department
22 of Consumer Affairs (Board).

23 2. On or about August 21, 1978, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 32806 to Robert Adams Graham, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2020, unless renewed.

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28 \\\

JURISDICTION

3. This Second Amended Accusation, which supersedes the First Amended Accusation filed on December 3, 2018, in the above entitled matter, is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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1 5. Section 2234 of the Code, states:

2 “The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

5 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
6 violation of, or conspiring to violate any provision of this chapter.

7 “(b) Gross negligence.

8 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
9 omissions. An initial negligent act or omission followed by a separate and distinct departure from
10 the applicable standard of care shall constitute repeated negligent acts.

11 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
12 for that negligent diagnosis of the patient shall constitute a single negligent act.

13 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
14 constitutes the negligent act described in paragraph (1), including, but not limited to, a
15 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
16 applicable standard of care, each departure constitutes a separate and distinct breach of the
17 standard of care.

18 “(d) Incompetence.

19 “(e) The commission of any act involving dishonesty or corruption which is substantially
20 related to the qualifications, functions, or duties of a physician and surgeon.

21 “(f) Any action or conduct which would have warranted the denial of a certificate.

22 “(g) The practice of medicine from this state into another state or country without meeting
23 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
24 apply to this subdivision. This subdivision shall become operative upon the implementation of the
25 proposed registration program described in Section 2052.5.

26 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
27 participate in an interview by the board. This subdivision shall only apply to a certificate holder
28 who is the subject of an investigation by the board.”

1 6. Section 2236 of the Code states:

2 “(a) The conviction of any offense substantially related to the qualifications, functions, or
3 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
4 chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction
5 occurred.

6 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
7 Division of Medical Quality of the pendency of an action against a licensee charging a felony or
8 misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice
9 shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting
10 agency shall also notify the clerk of the court in which the action is pending that the defendant is
11 a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a
12 physician and surgeon.

13 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
14 after the conviction, transmit a certified copy of the record of conviction to the board. The
15 division may inquire into the circumstances surrounding the commission of a crime in order to fix
16 the degree of discipline or to determine if the conviction is of an offense substantially related to
17 the qualifications, functions, or duties of a physician and surgeon.

18 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
19 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
20 shall be conclusive evidence of the fact that the conviction occurred.”

21 7. Section 2052 of the Code states:

22 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
23 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
24 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
25 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
26 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
27 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
28 authorized to perform the act pursuant to a certificate obtained in accordance with some other

1 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
2 dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
3 Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either
4 imprisonment.

5 “(b) Any person who conspires with or aids or abets another to commit any act described
6 in subdivision (a) is guilty of a public offense, subject to the punishment described in that
7 subdivision.

8 “(c) The remedy provided in this section shall not preclude any other remedy provided by
9 law.”

10 8. Title 16, Section 1379 of the California Code of Regulations states:

11 “A physician and surgeon or a podiatrist who collaborates in the development of
12 standardized procedures for registered nurses shall comply with Title 16 California
13 Administrative Code Sections 1470 through 1474 governing development and use of standardized
14 procedures.”

15 9. Title 16, Section 1474 of the California Code of Regulations states:

16 “Following are the standardized procedure guidelines jointly promulgated by the Medical
17 Board of California and by the Board of Registered Nursing:

18 “(a) Standardized procedures shall include a written description of the method used in
19 developing and approving them and any revision thereof.

20 “(b) Each standardized procedure shall:

21 “(1) Be in writing, dated and signed by the organized health care system personnel
22 authorized to approve it.

23 “(2) Specify which standardized procedure functions registered nurses may perform and
24 under what circumstances.

25 “(3) State any specific requirements which are to be followed by registered nurses in
26 performing particular standardized procedure functions.

27 “(4) Specify any experience, training, and/or education requirements for performance of
28 standardized procedure functions.

1 “(5) Establish a method for initial and continuing evaluation of the competence of those
2 registered nurses authorized to perform standardized procedure functions.

3 “(6) Provide for a method of maintaining a written record of those persons authorized to
4 perform standardized procedure functions.

5 “(7) Specify the scope of supervision required for performance of standardized procedure
6 functions, for example, immediate supervision by a physician.

7 “(8) Set forth any specialized circumstances under which the registered nurse is to
8 immediately communicate with a patient's physician concerning the patient's condition.

9 “(9) State the limitations on settings, if any, in which standardized procedure functions may
10 be performed.

11 “(10) Specify patient record keeping requirements.

12 “(11) Provide for a method of periodic review of the standardized procedures.”

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 10. Respondent is subject to disciplinary action under section 2234, subdivision (b), in
16 that he engaged in an act or acts amounting to gross negligence.

17 Circumstances related to Rebekah DeMoss, R.N., are as follows:

18 11. Between July, 2011, and November 4, 2014, Rebekah DeMoss, R.N., provided
19 cosmetic treatments to hundreds of patients without physician supervision. These treatments
20 included Botox anti-wrinkle treatments, and Juvederm injectable facial filler treatments. Both of
21 these treatments are available by prescription only. These treatments were provided to patients at
22 spas and private homes, under the name “ZLB Rejuvenation.” Nurse DeMoss employed
23 Respondent as Medical Director of ZLB Rejuvenation, for which he was paid \$500 per month.
24 During the time that Respondent was Medical Director of ZLB Rejuvenation, he did not perform
25 any examinations of patients who received cosmetic treatments performed by DeMoss, and he did
26 not review any patient medical records related to cosmetic treatments performed by DeMoss.
27 Respondent allowed DeMoss to order medications using his name and medical license.
28 Respondent was unaware of when, what, or how much medication DeMoss ordered, or where she

1 ordered it from. Respondent had no standardized protocols in place governing the care DeMoss
2 provided, and Respondent was unaware of what, if any, prior training DeMoss had in performing
3 cosmetic treatments.

4 12. Registered Nurses may perform cosmetic treatments under the supervision of a
5 physician. When prescription drugs or devices are to be used, a prior physical examination by a
6 physician is required. Once the examination is performed, the physician can delegate the
7 procedure to the nurse, pursuant to standardized procedures that dictate when the physician
8 should be contacted regarding a patient's condition. The physician must be immediately
9 reachable and able to assist in the management of the patient's care.

10 13. On or about November 3, 2014, patient S.E. presented to DeMoss for a Botox
11 treatment of wrinkles in the glabellar area and chin as well as a browlift. Respondent was not
12 present and provided no prior physical examination. DeMoss provided the requested treatment
13 while under observation by an undercover investigator.

14 14. Patient P.E. presented to DeMoss for Juvederm and Botox treatments on four
15 occasions: April 27, 2013; November 29, 2013; June 6, 2014; and September 9, 2014. DeMoss
16 failed to document a medical history, and Respondent failed to perform a prior physical
17 examination. Respondent never reviewed this patient's chart.

18 15. Patient S.H. presented to DeMoss on nine occasions between November 25, 2012,
19 and October 7, 2014, for Botox and/or Juvederm treatments. DeMoss never documented a
20 medical history, and Respondent never documented a prior physical examination. Respondent
21 never reviewed this patient's chart.

22 16. Patient C.H. presented to DeMoss on three occasions: December 4, 2013; March 24,
23 2013; and September 12, 2014, for Botox and/or Juvederm treatments. Respondent never
24 documented a prior physical examination of this patient. Respondent never reviewed this
25 patient's chart.

26 17. Patient R.S. presented to DeMoss on ten occasions between July 23, 2011, and
27 November 4, 2014, for Botox and/or Juvederm treatments. DeMoss never documented a medical
28

1 history, and Respondent never documented a prior physical examination. Respondent never
2 reviewed this patient's chart.

3 18. Respondent committed gross negligence in allowing a registered nurse, whom he had
4 agreed to supervise, to evaluate and treat patients with Botox and Juvederm without a prior
5 physical examination.

6 Circumstances related to Julie Guyette, N.P., are as follows:

7 19. On or about July 10, 2013, the Board of Registered Nursing initiated an investigation
8 regarding allegations that Julie Guyette, N.P., a licensee of that Board, was recklessly prescribing
9 narcotic medications. Julie Guyette, N.P., worked at the North Fresno Family Health clinic in
10 Fresno, California. Respondent was her supervising physician.

11 20. On or about October 22, 2013, an undercover investigator using the fictitious name
12 "Kristina Rios" presented to Julie Guyette, N.P. The investigator told Guyette that she had not
13 been sleeping well for the past three to four months, and that the problem was worsening.
14 Guyette completed a brief physical examination of the investigator, and discussed the reasons for
15 insomnia and indicated that the inability to sleep is a symptom of depression. Guyette asked the
16 investigator questions about her employment status, marital status, children, and support system.
17 Guyette told the investigator she could provide sample medications that would help her with sleep
18 and assist with depression and anxiety. Guyette provided the investigator with ten individually
19 packaged Lunesta¹ 3 mg tablets, and three packages containing Viibyrd² tablets.

20 21. On or about November 13, 2013, an undercover investigator using the fictitious name
21 "Michael Williams" presented to Julie Guyette, N.P. The investigator told Guyette that he had
22 not been sleeping well for the past four months. The investigator stated that he could sleep better
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24
25 ¹ Lunesta (eszopiclone) is a sedative medication used to treat insomnia. It is a Schedule
26 IV controlled substance.

27 ² Viibyrd (vilazodone) is a serotonergic antidepressant. It is not a scheduled controlled
28 substance, but is available only by prescription.

1 when he drank alcoholic beverages or took Vicodin³, and described drinking six beers per night.
2 Guyette completed a brief physical examination and discussed causes of insomnia. The
3 investigator stated that he had tried Ambien and Lunesta, and that neither worked for him.
4 Guyette stated that an older sleep agent may work, and suggested that the investigator do blood
5 work and have a sleep study performed. The investigator refused blood work or a sleep study.
6 Guyette then issued a prescription for thirty temazepam⁴ tablets.

7 22. On or about October 14, 2014, an undercover investigator using the fictitious name
8 "Julian Padron" presented to Julie Guyette, N.P. The investigator told a medical assistant that he
9 was being seen for anxiety related to fear of flying. Guyette asked the investigator questions
10 related to allergies to medications, surgeries, family health history, and which pharmacy he
11 utilized. The investigator told Guyette he had been taking Vicodin to help him with sleep, and
12 stated that the Vicodin was not prescribed and that he obtained it from coworkers. The
13 investigator stated that he was taking the Vicodin for anxiety, and that he didn't like the side
14 effects of other medications like Ambien. Guyette asked the investigator if he had tried Valium,
15 and the investigator said he had not. Guyette issued a prescription for thirty Vicodin and thirty
16 Valium. Guyette did not document any indication for the Vicodin prescription other than
17 "anxiety." The investigator returned to Guyette on two additional separate occasions, each time
18 obtaining additional prescriptions of Vicodin for "anxiety."

19 23. In each of the above encounters with undercover investigators, Julie Guyette, N.P.,
20 failed to document any formal pain inventory or assessment, any review of prior records, any
21 access of the CURES⁵ Patient Activity Report, or any review of the patient cases with
22 Respondent, who was her supervising physician. Guyette failed to document any pain or
23 controlled substance contracts with the patients. Respondent never saw any of the three fictitious
24 patients, and he never documented any review of the prescriptions Guyette issued.

25 ³ Vicodin is a preparation of the opiate hydrocodone and acetaminophen.

26 ⁴ Temazepam is a benzodiazepine sedative used to treat insomnia. It is a Schedule IV
27 controlled substance.

28 ⁵ Controlled Substance Utilization Review and Evaluation System.

1 24. Initially, upon assuming supervisory responsibility for Guyette, Respondent did not
2 establish any standardized procedures or protocols at the office. Respondent later provided
3 Guyette with the 2011 edition of Ferri's Clinical Advisor handbook to Guyette to assist her in
4 medical decision making. Initially, Respondent did not review any patient charts, and later only
5 reviewed charts that Guyette had questions about.

6 25. The standard of care for supervision of a nurse practitioner requires that the
7 furnishing or ordering of drugs or devices by a nurse practitioner occur under physician
8 supervision. Such supervision includes collaboration on the development of a standardized
9 procedure, approval of the standardized procedure, and availability by telephone at the time the
10 patient is being examined by the nurse practitioner. The standard of care requires that the
11 standardized procedure comply with Title 16, Section 1474 of the California Code of Regulations,
12 which is incorporated here by reference as if fully set forth.

13 26. Respondent committed gross negligence in his supervision of Julie Guyette, N.P., in
14 that he failed to establish and adhere to a standardized procedure for the furnishing or ordering of
15 drugs or devices.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**

18 27. Respondent is subject to disciplinary action under section 2234, subdivision (c), in
19 that he committed repeated acts of negligence. The circumstances are set forth in paragraphs 11
20 through 26, above, which are incorporated here by reference as if fully set forth.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Aiding/Abetting Unlicensed Practice)**

23 28. Respondent is subject to disciplinary action under section 2234, subdivision (a), and
24 section 2052, subdivision (b) in that he aided and abetted the unlicensed practice of medicine.
25 The circumstances are set forth in paragraphs 11 through 26, above, which are incorporated here
26 by reference as if fully set forth.

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FOURTH CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

29. Respondent is subject to disciplinary action under section 2236 in that he suffered a misdemeanor conviction substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are set forth in paragraphs 11 through 18, above, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

30. On or about August 31, 2016, in the Superior Court of California for the County of Fresno, in an action entitled "The People of the State of California vs. Rebekah Suzanne Demoss and Robert Adams Graham," case number F16905392, a felony complaint was filed alleging inter alia that on or about October 1, 2014, through November 30, 2014, Respondent committed a violation of Business and Professions Code section 2052, subdivision (b), a felony, aiding and abetting the unlicensed practice of medicine.

31. On or about December 18, 2018, in the Superior Court of California for the County of Fresno, in an action entitled "The People of the State of California vs. Rebekah Suzanne Demoss and Robert Adams Graham," case number F16905392, Respondent entered a plea of no contest to an amended single misdemeanor count of violating Business and Professions Code section 2052, subdivision (b), aiding and abetting unlicensed practice of medicine. Respondent was sentenced to one year of bench probation with various terms and conditions.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 32806, issued to Robert Adams Graham, M.D.;
2. Revoking, suspending or denying approval of Robert Adams Graham, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Robert Adams Graham, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: February 20, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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